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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

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6 JAMES D. NOLAND JR.,

7 Plaintiff,

8 v.

9 ORGANO GOLD INTERNATIONAL, INC.,
10 et al.,

11 Defendants.

Case No. 2:18-cv-01275-JAD-CWH

ORDER

12 Presently before the court is defendants Organo Gold Enterprises, Inc., Organo Gold
13 International, Inc., Bernardo Chua, and Holton Buggs, Jr.'s motion to quash deposition notices
14 and for protective order (ECF No. 89), filed on November 20, 2018. Plaintiff James D. Noland
15 Jr. filed a response (ECF No. 92) on December 14, 2018. Defendants filed a reply (ECF No. 103)
16 on December 21, 2018.

17 Also before the court is plaintiff's motion to amend the discovery plan and scheduling
18 order (ECF Nos. 110, 111, 112), filed on January 31, 2019. Defendants Jane Doe Buggs and
19 Holton Buggs, Jr. filed a response (ECF No. 113) on February 14, 2019. Defendants Bernardo
20 Chua, Organo Gold International Inc., and Organo Gold Enterprises Inc. filed a response (ECF
21 No. 114) on February 14, 2019. Plaintiff filed a reply (ECF Nos. 115, 116) on February 21, 2019.

22 **I. BACKGROUND**

23 This case arises from allegations that plaintiff's partners, defendants Bernard Chua and
24 Shane Morand, conspired with defendants Holton Buggs Jr. and Jamie Foo to defraud plaintiff of
25 his ownership shares in Organo Gold Enterprises Inc. (First Amended Compl. (ECF No. 78).)
26 Plaintiff alleges violations of federal and state RICO statutes, along with conspiracy to violate
27 RICO statutes. (*Id.*) Plaintiff also alleges that the underlying subject matter in this action is
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1 similar to a lawsuit originally initiated in Canada.¹ (*Id.*) Plaintiff alleges that he initiated the
2 instant action because Canada does not have RICO statutes or an equivalent that permits a civil
3 remedy. (*Id.*) The court issued a scheduling order in this case, providing January 30, 2019 as the
4 discovery cut-off deadline. (Scheduling Order (ECF No. 49).)

5 Defendant Organo Gold International, joined by Chua, filed a motion for summary
6 judgment, arguing that plaintiff's claims are time-barred because he waited nine years to file the
7 complaint in this action. (Mot. for Summary Judgment (ECF No. 82).) Plaintiff responds that
8 his claims are subject to equitable tolling because of his ongoing litigation in Canada and his use
9 of Canadian attorneys unfamiliar with United States RICO statutes. (Resp. (ECF No. 101).)
10 Plaintiff also argues that defendants engaged in fraudulent concealment and that the fraudulent
11 actions were not discovered until 2018. (*Id.*) Defendants reply that the statute of limitations
12 began to run once plaintiff discovered the alleged injury in 2009, and that plaintiff has not met his
13 burden in demonstrating fraudulent concealment. (Reply (ECF No. 100).)

14 Defendants Organo Gold Enterprises, Inc., Organo Gold International, Inc., Bernardo
15 Chua, and Holton Buggs, Jr. now move to stay discovery pending the resolution on Organo Gold
16 International, Inc. and Chau's motion for summary judgment (ECF Nos. 82-84, 87) and to quash
17 plaintiff's depositions notices. (Joint Mot. to Quash (ECF No. 89).) Plaintiff responds that the
18 request to quash deposition notices is moot because the deposition dates passed without an
19 appearance from defendants. (Resp. (ECF No. 101).) Plaintiff also argues that discovery should
20 not be stayed because defendants are unlikely to succeed on the pending motion for summary
21 judgment. (*Id.*) Defendants reply that discovery is unnecessary to resolve the underlying motion
22 for summary judgment, and that the motion for summary judgment is likely to be granted. (Reply
23 (ECF No. 103).) Lastly, defendants concede that the request to quash the deposition notices is
24 moot. (*Id.*)

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28 ¹Defendants contend that plaintiff initiated the Canadian action more than eight years ago. (*See* Mot. for
Summary Judgment (ECF No. 82) at 3.)

1 On January 31, 2019, at 12:04 a.m., plaintiff filed the instant motion requesting a 60-day
2 extension of discovery deadlines, including the January 30, 2019 discovery cut-off date, and
3 requesting that the court strike defendants' answers. (Mot. to Amend (EC No. 110).) Defendants
4 Jane Doe Buggs, Holton Buggs, Jr., Bernardo Chua, Organo Gold International Inc., and Organo
5 Gold Enterprises Inc., do not oppose an extension of deadlines after January 31, 2019, the date
6 that plaintiff filed the motion. (*See* Resp. (ECF Nos. 113, 114).) Plaintiff replies that he has
7 demonstrated excusable neglect for an extension of the discovery cut-off deadline, and plaintiff
8 also withdraws his request to strike defendants' answers. (Reply (ECF Nos. 115, 116).)

9 **II. MOTION TO QUASH DEPOSITION NOTICES AND TO STAY DISCOVERY**

10 Defendants move to quash deposition notices and to stay discovery pending a ruling on
11 the motion for summary judgment. However, in the course of briefing this motion, the parties
12 agree that the request to quash the deposition notices is moot. As such, the court denies the
13 request to quash and will only resolve the motion to stay.

14 Courts have broad discretionary power to control discovery, including the decision to stay
15 discovery. *See e.g., Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). When evaluating
16 whether to stay discovery, the court considers the goal of Rule 1 of the Federal Rules of Civil
17 Procedure, which directs that the rule must be "construed and administered to secure the just,
18 speedy, and inexpensive determination of every action." *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D.
19 597, 602 (D. Nev. 2011) (citation omitted). But the Rules do not provide for an automatic stay of
20 discovery when a potentially dispositive motion is pending. *Id.* at 600–01. Thus, a pending
21 dispositive motion "is not ordinarily a situation that in and of itself would warrant a stay of
22 discovery." *Turner Broad. Sys., Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997)
23 (quotation omitted). Nor does the fact that "discovery may involve some inconvenience and
24 expense" automatically warrant a stay of discovery. *Id.*

25 In determining whether to stay discovery, the court considers whether (1) the pending
26 motion is potentially dispositive of the entire case, or at least of the issue on which discovery is
27 sought; and (2) the potentially dispositive motion can be decided without additional discovery.
28 *Ministerio Roca Solida v. U.S. Dep't of Fish & Wildlife*, 288 F.R.D. 500, 506 (D. Nev. 2013).

1 This analysis requires the court to take a “preliminary peek” at the potentially dispositive motion.
2 *Tradebay*, 278 F.R.D. at 603. This assessment is meant not to prejudge a motion’s outcome but,
3 rather, to accomplish the cost- and time-saving objectives of Rule 1 by evaluating the justice of
4 either permitting or delaying discovery. *Id.* Ultimately, the party seeking the stay “carries the
5 heavy burden of making a ‘strong showing’ why discovery should be denied.” *Turner*, 175
6 F.R.D. at 556 (quotation omitted).

7 After conducting a primary peek of defendants Organo Gold International and Chua’s
8 motion for summary judgment, the court in its discretion finds that a stay of discovery is
9 warranted. The pending motion for summary judgment, if granted, would dispose of this case in
10 its entirety. Further, the motion for summary judgment can be decided without additional
11 discovery. The central issues in defendants’ summary judgment are whether plaintiff’s claims are
12 time-barred by the statute of limitations, and whether plaintiff is entitled to equitable tolling.
13 Whether or not to stay discovery is a close question, given that the parties dispute when plaintiff
14 was aware of the injury caused by defendants’ alleged actions. However, additional discovery
15 will not aid the court in determining whether the claims are time-barred or whether equitable
16 tolling is applicable. As such, the court will stay discovery pending the outcome of the motion
17 for summary judgment.

18 **III. MOTION TO EXTEND DISCOVERY**

19 Plaintiff also moves to extend the discovery deadlines in the court’s scheduling order, and
20 to strike defendants’ answers. However, plaintiff has withdrawn his request to strike, and the
21 court is staying discovery. As such, plaintiff’s motion to extend discovery deadlines is denied
22 without prejudice. If the court denies the motion for summary judgment, plaintiff may refile the
23 motion for additional time to conduct discovery.

24 **IV. CONCLUSION**

25 IT IS THEREFORE ORDERED that defendants’ motion to quash deposition notices and
26 for protective order (ECF No. 89) is DENIED in part and GRANTED in part.

27 IT IS FURTHER ORDERED that discovery is STAYED pending the resolution of the
28 motion for summary judgment (ECF No. 82).

1 IT IS FURTHER ORDERED that plaintiff's motion to amend the discovery plan and
2 scheduling order (ECF Nos. 110, 111, 112) is DENIED without prejudice.

3 DATED: April 23, 2019

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7 C.W. HOFFMAN, JR.
8 UNITED STATES MAGISTRATE JUDGE
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